

AMENDED IN SENATE APRIL 10, 2014

SENATE BILL

No. 1356

Introduced by Senator Lieu

February 21, 2014

An act to amend ~~Section 17800 of, and to repeal Sections 17801 and 17802 of, of the Business and Professions Code, and to amend Section 3496 of the Civil Code,~~ relating to counterfeit goods.

LEGISLATIVE COUNSEL'S DIGEST

SB 1356, as amended, Lieu. Counterfeit goods: abatement: nonresidential premises.

Existing

(1) *Existing* law provides that, until January 1, 2015, if a person is convicted for willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit mark, then a nonresidential building or place used by that person for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit of a registered mark is a nuisance that shall be enjoined, abated, and prevented, whether it is a public or private nuisance, and specified civil remedies may be applied. ~~Existing law requires that the owner of the property be provided with 30 days notice prior to the filing of an action to abate a nuisance under these provisions. A violation of a restraining order or an injunction relative to a nuisance in this context is a crime.~~ Under existing law, a district attorney, county counsel, city attorney, or city prosecutor that maintains an action or actions to enjoin, abate, or prevent a nuisance pursuant to these provisions was required to report to the Legislature by October 1, 2013, on their use of the provisions and their effectiveness.

~~This bill instead would provide that any nonresidential building or place used to willfully manufacture, intentionally sell, or knowingly possess for sale any counterfeit goods shall be deemed a nuisance which may be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance, and that specified civil penalties shall apply. The bill would remove the requirement that the owner of the property be provided 30 days notice prior to the filing of an action to abate a nuisance under these provisions; and also would delete the above-described reporting requirements. It would repeal the date upon which the remaining provisions would become inoperative, thus extending them indefinitely.~~

~~This bill would allow a court to award costs, including the costs of investigation and discovery, and reasonable attorney's fees, which are not compensated for pursuant to some other provision of law, to the prevailing party in any case in which a governmental agency seeks to enjoin the use of a nonresidential building or place, or seeks to enjoin in or upon any nonresidential building or place the unlawful manufacturing, selling, or possession for sale of any counterfeit goods.~~

~~This bill would extend the operation of the provisions described above until January 1, 2016. By extending the operation of these provisions, this bill would expand the scope of a crime, as described above. The bill would also require a district attorney, county counsel, city attorney, or city prosecutor that maintains an action to enjoin, abate, or prevent a nuisance pursuant to these provisions to provide a report to the Senate and Assembly Committees on Judiciary, as specified, by February 1, 2015.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no-yes.
State-mandated local program: no-yes.~~

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 17801 of the Business and Professions*
- 2 *Code is amended to read:*

17801. A district attorney, county counsel, city attorney, or city prosecutor that maintains an action or actions to enjoin, abate, or prevent a nuisance pursuant to the provisions of this chapter shall report to the Senate and Assembly Committees on Judiciary, by ~~October 1, 2013~~, *February 1, 2015*, on their use of the provisions of this chapter and their effectiveness. The report shall include, but not be limited to, all of the following:

(a) The frequency of use of the nuisance abatement provisions as well as statistics on whether the use of the abatement provisions correlates with a decrease in the use of criminal penalties.

(b) Any statistics or information concerning the impact of the use of these provisions on counterfeiting overall, both in the relevant county or city and overall.

SEC. 2. Section 17802 of the Business and Professions Code is amended to read:

17802. This chapter shall remain in effect only until January 1, ~~2015~~, *2016*, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2015~~, *2016*, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. Section 17800 of the Business and Professions Code is amended to read:~~

~~17800. (a) A nonresidential building or place used for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit goods shall be deemed a nuisance which may be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance. The remedies and procedures provided in Article 2 (commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 of the Penal Code shall be applied by the court. For purposes of this section, an abatement under Section 11230 of the~~

1 Penal Code is discretionary rather than mandatory and may be for
2 a period up to one year.

3 (b) ~~As used in this chapter, “counterfeit goods” means (1) any~~
4 ~~counterfeit of a mark registered with the Secretary of State or~~
5 ~~registered on the Principal Register of the United States Patent and~~
6 ~~Trademark Office or (2) any recording or audiovisual work, the~~
7 ~~cover, box, jacket, or label of which does not disclose the~~
8 ~~information as specified in subdivision (a) of Section 653w of the~~
9 ~~Penal Code.~~

10 SEC. 2. ~~Section 17801 of the Business and Professions Code~~
11 ~~is repealed.~~

12 SEC. 3. ~~Section 17802 of the Business and Professions Code~~
13 ~~is repealed.~~

14 SEC. 4. ~~Section 3496 of the Civil Code is amended to read:~~

15 3496. ~~In any of the following described cases, the court may~~
16 ~~award costs, including the costs of investigation and discovery,~~
17 ~~and reasonable attorney’s fees, which are not compensated for~~
18 ~~pursuant to some other provision of law, to the prevailing party:~~

19 (a) ~~In any case in which a governmental agency seeks to enjoin~~
20 ~~the sale, distribution, or public exhibition, for commercial~~
21 ~~consideration, of obscene matter, as defined in Section 311 of the~~
22 ~~Penal Code.~~

23 (b) ~~In any case in which a governmental agency seeks to enjoin~~
24 ~~the use of a building or place for the purpose of illegal gambling,~~
25 ~~lewdness, assignation, human trafficking, or prostitution; or any~~
26 ~~case in which a governmental agency seeks to enjoin acts of illegal~~
27 ~~gambling, lewdness, assignation, human trafficking, or prostitution~~
28 ~~in or upon a building or place, as authorized in Article 2~~
29 ~~(commencing with Section 11225) of Chapter 3 of Title 1 of Part~~
30 ~~4 of the Penal Code.~~

31 (c) ~~In any case in which a governmental agency seeks to enjoin~~
32 ~~the use of a building or place, or seeks to enjoin in or upon any~~
33 ~~building or place the unlawful sale, manufacture, service, storage,~~
34 ~~or keeping or giving away of any controlled substance, as~~
35 ~~authorized in Article 3 (commencing with Section 11570) of~~
36 ~~Chapter 10 of Division 10 of the Health and Safety Code.~~

37 (d) ~~In any case in which a governmental agency seeks to enjoin~~
38 ~~the unlawful sale, service, storage, or keeping or giving away of~~
39 ~~alcoholic liquor, as authorized in Article 1 (commencing with~~
40 ~~Section 11200) of Chapter 3 of Title 1 of Part 4 of the Penal Code.~~

1 ~~(e) In any case in which a governmental agency seeks to enjoin~~
2 ~~the use of a nonresidential building or place, or seeks to enjoin in~~
3 ~~or upon any nonresidential building or place the unlawful~~
4 ~~manufacturing, selling, or possession for sale of any counterfeit~~
5 ~~goods as authorized in Chapter 4 (commencing with Section 17800)~~
6 ~~of Part 3 of Division 7 of the Business and Professions Code or~~
7 ~~Section 11226 of the Penal Code.~~

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